

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6168**

**BILL NUMBER: SB 13**

**NOTE PREPARED:** Nov 13, 2002

**BILL AMENDED:**

**SUBJECT:** Newly Discovered Evidence.

**FIRST AUTHOR:** Sen. Bowser

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill provides that if a person is sentenced to death and proceedings on the person's petition for postconviction relief have become final, but the person makes a prima facie showing that previously undisclosed evidence exists and that it is reasonably likely that this evidence would have affected the person's conviction or sentence if disclosed at trial, the Supreme Court shall consider the previously undisclosed evidence as part of its continuing automatic review.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** If new evidence is permitted to be admitted into record, then the outcome could range from the court ordering a new trial, additional reviews, or resentencing to either life without parole or a term of years. If additional trials occur, then counties may request additional reimbursements from the Public Defense Fund.

The following shows the reimbursements from the Public Defense Fund for capital cases over the past five years.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Capital Cases	\$799,450	\$526,512	\$378,209	\$712,055	\$473,317

The Public Defense Fund receives \$2.4 M annually in transfers from the General Fund and an additional appropriation of \$4.6 M for FY 2003.

*Background:* Indiana law and rules of court provide for the following levels of review by courts when a death penalty is imposed.

Review Level	Court of Review	Issues Permitted To Be Raised
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

As of November 2002, the Indiana Supreme Court reported that 41 offenders were on Death Row in Indiana at various stages of federal and state review. The Indiana State Supreme Court reports that these offenders are at the following stages of appeal.

Stage	Number of Offenders
Federal Appeal	26
Post Conviction Relief	8
Direct Appeal	7
Total Offenders	41

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** If a new trial is ordered, the county where the death penalty was originally requested may need to have a new trial.

Legislative Services Agency staff, for the Criminal Law Study Commission, compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

<b>Cost Components for Murder Trials:</b>		
	<b>Death Penalty</b>	<b>Life Without Parole</b>
Attorneys and Related Costs	\$215,608	\$45,617
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	<u>\$327,150</u>	<u>\$68,561</u>

The costs of legal representation for a criminal defendant in a death penalty case are between four and five times as expensive compared to the costs of a criminal trial in which the most serious sentence is life without parole. This is because Criminal Rule 24 of the Indiana Supreme Court requires that a criminal defendant in a death penalty case receive two attorneys and an almost unlimited expense account.

**Explanation of Local Revenues:**

**State Agencies Affected:** State Supreme Court, Office of the Attorney General, State Public Defender's Office, Department of Correction.

**Local Agencies Affected:** Trial Courts, Prosecuting Attorney.

**Information Sources:** *The Application of Indiana's Capital Sentencing Law: Findings of the Indiana Criminal Law Study Commission*, January 10, 2002.

**Fiscal Analyst:** Mark Goodpaster, 232-9852